

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY CAMPBELL,

Defendant-Appellant.

UNPUBLISHED

December 28, 2001

No. 226738

Wayne Circuit Court

LC No. 98-013430

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of first-degree home invasion, MCL 750.110a(2), two counts of assault with intent to rob while armed, MCL 750.89, felonious assault, MCL 750.82, first-degree criminal sexual conduct, MCL 750.520b(1)(e), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a third habitual offender, MCL 769.11, to concurrent prison terms of fifteen to twenty-five years each for the assault with intent to rob convictions, two to eight years for the felonious assault conviction, and twenty to thirty years for the first-degree CSC conviction, to be served consecutive to a ten to forty year term for the home invasion conviction and a two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant argues that resentencing is required because the trial court erroneously believed that it was required to impose a consecutive sentence for the home invasion conviction. We disagree. A court's authority to resentence a defendant depends on whether the previously imposed sentence is invalid. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997); *People v Hill*, 221 Mich App 391, 394; 561 NW2d 862 (1997). A sentence is invalid if the trial court fails to exercise its discretion because it is laboring under a misconception of the law. *Id.* Resentencing is required under such circumstances. *People v Green*, 205 Mich App 342, 346; 517 NW2d 782 (1994). Absent clear evidence that a sentencing court incorrectly believed that it lacked discretion, however, the presumption that a trial court knows the law must prevail. *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001). Here, defendant does not identify, nor does the record reveal, that the court made any comments indicating that it erroneously believed that it lacked discretion to impose a concurrent sentence. Because there is no clear evidence to support a conclusion that the court believed it lacked discretion, resentencing is unwarranted. *Id.*

Next, defendant argues that the evidence was insufficient to convict him of first-degree criminal sexual conduct as an aider and abettor. We disagree. We review de novo challenges to the sufficiency of the evidence, as a constitutional issue of due process. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In determining whether there is sufficient evidence to sustain a conviction, an appellate court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

“Aiding and abetting” includes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage or incite the commission of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). To support a finding of aiding and abetting, the prosecutor must show that: (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement which assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *Id.* at 757. An aider and abettor’s state of mind may be inferred from all the facts and circumstances. *Id.* However, a defendant’s mere presence at a crime, even with knowledge that the offense is about to be committed, is not enough to make him an aider and abettor. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999).

In this case, there was evidence that defendant willingly participated in a scheme to gain entry to the victim’s house, which he entered brandishing a gun and carrying duct-tape. Defendant subsequently bound the female victim with duct-tape. After a codefendant tore off the victim’s nightgown and told her to open her legs, defendant held a gun to her head. Although defendant subsequently left the room while the victim was sexually assaulted by the codefendant, his conduct before leaving was sufficient to enable the jury to find beyond a reasonable doubt that he assisted the codefendant in the commission of the crime with knowledge of the codefendant’s intent. Thus, the evidence was sufficient to support defendant’s conviction for first-degree CSC.

Affirmed.

/s/ William B. Murphy

/s/ Janet T. Neff

/s/ Joel P. Hoekstra